

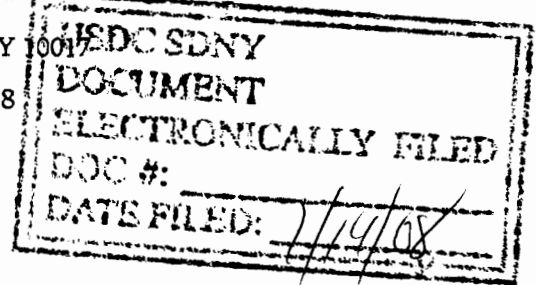
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July 11, 2008



VIA FACSIMILE 212 -805-4268

MEMORANDUM ENDORSED

The Honorable Gabriel W. Gorenstein
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: Lavian v. Tokayer, Esq.
United States District Court, Southern District of New York
Civil Action No.: 08-CV-00938 (PAC/GWG)
FKB File No.: 300.050

Dear Magistrate Judge Gorenstein:

This Firm represents Ira Daniel Tokayer, Esq., a named defendant in the above-captioned matter. We write pursuant to your Honor's individual practice rules to request a pre-motion conference seeking leave of the Court to file a motion to dismiss the complaint pursuant to Fed. Rule Civ. Proc. 12 (b) (6).

The doctrine of collateral estoppel prohibits plaintiff from proceeding with his claim for legal malpractice and negligence and, therefore, the Complaint should be dismissed. Defendant Tokayer successfully prosecuted a claim for unpaid legal fees arising from the same underlying representation and was awarded the sum of \$24,909.56.

It is well settled that a legal malpractice action is barred by the successful prosecution of a prior action to recover fees for the same legal services that the plaintiff alleges were negligently performed. See Afsharimehr v. Barer, 303 A.D.2d 432, 755 N.Y.S.2d 888 (2d Dept. 2003); Wallenstein v. Cohen, 45 A.D.3d 674, 845 N.Y.S.2d 428 (2d Dept. 2007).

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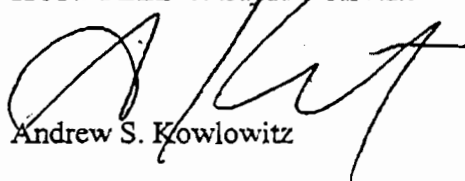
After Defendant Tokayer withdrew as counsel to plaintiff on March 1, 2005, Honorable Herman Cahn, J.S.C., New York County, ordered plaintiff and Defendant Tokayer to appear before a Special Referee to determine the amount, if any, of legal fees owed. The parties appeared before Special Referee Howard G. Leventhal, of the New York County Supreme Court, for a five (5) day hearing. The parties introduced the testimony of several witnesses and the Special Referee had the opportunity to consider a lengthy record. During the course of the hearing, plaintiff presented his claim for legal malpractice.

On April 16, 2007, Special Referee Leventhal issued a comprehensive 10 page Referee's Report, which rejected plaintiff's claim for legal malpractice, finding that to the extent "[plaintiff] now complains that his counsel failed to defend him zealously, there is no merit to such contention." Special Referee Leventhal awarded Defendant Tokayer a \$24,909.56 charging lien for legal services, finding that plaintiff is a "serial non-payer of attorneys." Therefore, plaintiff's purported claim for legal malpractice is barred by Special Referee Leventhal's findings.

This Court previously extended Defendant Tokayer's time in which to respond to the Complaint to July 25, 2008. Thus, the instant request is timely. We note that no previous request has been made. I am available to conference at the Court's convenience. I thank you for the Court's attention.

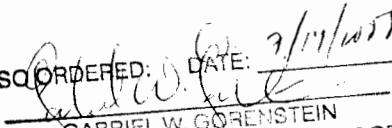
Respectfully submitted,

FURMAN KORNFIELD & BRENNAN LLP


Andrew S. Kowlowitz

cc: Shahram David Lavian
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Apartment 1A
Los Angeles CA 90024

*The premotion conference
requirement is waived.*

SO ORDERED: DATE: 7/14/08

GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE